



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 590

Notice of Revised Procedures Affecting Applications and Authorizations for the In-Transit Movement of Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Procedures.

SUMMARY:

Pursuant to section 3(a) of the Natural Gas Act (NGA), no person may import or export natural gas without authorization from the Department of Energy (DOE), and DOE will approve such imports or exports unless, after opportunity for a hearing, it determines that the imports or exports are not consistent with the public interest. Section 3(c) of the NGA provides that imports and exports of natural gas from or to countries with which the United States has entered into a free trade agreement (FTA) providing for national treatment for trade in natural gas (FTA countries), and all imports of liquefied natural gas (LNG) from any country, are deemed in the public interest and must be granted without modification or delay. This notice serves to clarify that in-transit shipments of natural gas, *i.e.*, shipments of natural gas that only temporarily pass through the United States before returning to their country of origin, or temporarily pass through a foreign country before returning to the United States, for consumption or other disposition, are not “imports” or “exports” within the meaning of section 3 of the Natural Gas Act. However, DOE will impose monthly reporting requirements on persons making such shipments in order to ensure these movements meet the criteria defining in-transit shipments, and are tracked accordingly.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In DOE/FE Order No. 3769,¹ DOE concluded that “Congress likely did not intend the words “import” and “export” to capture *any* movement of natural gas across the U.S. border, but rather intended to leave some discretion to the Federal Power Commission (the [DOE’s] predecessor in administering NGA Section 3, 15 U.S.C. 717b) on that question.”² Further, DOE concluded that “in-transit shipments returning to the country of origin are not imports or exports

¹ *Bear Head LNG Corporation & Bear Head LNG, LLC*, DOE/FE Order No. 3769, FE Docket No. 15-14-NG, Opinion and Order Dismissing Application for In-Transit Shipments of Canadian-Sourced Natural Gas and Directing Submission of Information Concerning In-Transit Shipments Returning to the Country of Origin (Feb. 5, 2016).

² *Id.* at 8.

within the meaning of section 3 of the Natural Gas Act.”³ Consequently, DOE concluded “that in-transit shipments returning to the country of origin fall outside [DOE’s] jurisdiction under NGA section 3.”⁴ This Notice sets forth procedures for the submission of information concerning in-transit shipments returning to the country of origin.

DOE considers an “in-transit shipment returning to the country of origin” as a shipment of natural gas through the United States between points of a single foreign nation, or through a single foreign nation between points in the United States, that are physical and direct. “Physical” means that the natural gas will be transported between two cross-border points. Thus, exchanges by backhaul or displacement, or other virtual shipments, do not qualify as in-transit shipments for purposes of this Order. “Direct” means that the natural gas must not be diverted for other purposes but must travel a commercially reasonable path between points in one country consistent with an intention merely to transit the other country. And, consistent with the U.S. Customs and Border Patrol regulations concerning in-transit shipments,⁵ to qualify as “in-transit” the natural gas must cross points of entry and exit at the United States border within a 30-day period. DOE expects the reporting of in-transit volumes—noting any line losses and/or natural gas that may be consumed as fuel during the transit process—to be made to the Department within 30 days following the month during which the in-transit shipment took place. The purpose of reporting the in-transit volumes is to confirm the non-jurisdictional status of such shipments and to understand the extent to which imports and exports are affecting the domestic natural gas market, and what movements of natural gas are limited to utilizing natural gas infrastructure and not directly impacting natural gas supply or demand. Additional information

³ *Id.* at 9.

⁴ *Id.* at 10.

⁵ *See* 19 C.F.R. §§ 18.31, 18.2(c)(2).

on reporting volumes is available at: <http://energy.gov/fe/services/natural-gas-regulation/guidelines-filing-monthly-reports>

II. Reporting Requirements for In-transit Shipments of Natural Gas

a. The entity holding title to the natural gas as it crosses borders shall file with the Office of Regulation and International Engagement, a report due not later than the 30th day of the month following the month of completion of an in-transit shipment. The report must give the following details of each in-transit shipment returning to the country of origin, including cases where natural gas originates from the United States and undergoes in-transit shipment and where natural gas originates in another country and transits the United States: (1) the name of the country that is both the origin and final destination, (2) the name of the country through which the gas is transported before returning to the origin country (the transit country - this may be either the United States or another country) (3) the initial border crossing point, (4) the foreign pipeline at the initial border crossing point, (5) the U.S. pipeline at the initial border crossing point, (6) the final border crossing point, (7) the foreign pipeline at the final border crossing point, (8) the U.S. pipeline at the final border crossing point, (9) the volume of natural gas moving through the final border crossing point, (10) the month and year in which the in-transit shipment took place, (11) the name of the entity that has title to the natural gas during the in-transit movement, (12) the name of the individual who prepared the report, and (13) contact information

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294.)

b. To show that no deliveries into or out of United States commercial markets have occurred, DOE/FE additionally requests clarification in monthly reports for in-transit shipments

specifying the difference in volumes entering the transit country and volumes leaving the transit country and the reason for any such differences, to the extent the information is available..

c. The entity holding title to the natural gas as it crosses borders shall maintain copies of the reports filed under paragraph a., *supra*, for each in-transit shipment returning to the country of origin for a period of one year after completion of the in-transit shipment, and provide that information to DOE/FE upon request.

d. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation and International Engagement, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Natural Gas Reports. Alternatively, reports may be e-mailed to ngreports@hq.doe.gov, or may be faxed to Natural Gas Reports at (202) 586-6050.

e. Companies that currently use import and export authorizations to report in-transit natural gas shipments may continue to report under their authorizations, but no new authorizations dedicated solely to in-transit shipments will be issued. Companies should not apply for new import and export authorizations if they plan on only conducting in-transit natural gas transactions.

f. Companies may use approved OMB information collection forms, which will be available on DOE/FE's website at: <http://www.energy.gov/fe/services/natural-gas-regulation/in-transit>

g. Companies can submit in-transit reports without docket or order numbers, if not reporting under authorizations permitting both imports and exports.

This Notice is effective immediately upon issuance.

Issued in Washington, D.C., on August 23, 2016.

John A. Anderson
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Office of Oil and Natural Gas

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